IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM NO.8622 & 23-C of 2006 and
RSA No.3464 of 2006
DATE OF DECISION: February 12,2007

Pyas Devi and others

….Appellants

VERSUS

Phool Chand and others

….Respondents

CORAM:- HON'BLE MR. JUSTICE VINEY MITTAL

PRESENT: Shri Ashok Khubbar, Advocate for the appellants.

Viney Mittal,J.(Oral).

For the reasons given in the application, delay in filing the present appeal is condoned.

The defendants are the appellants before this Court. They have concurrently lost before the two Courts below in a suit for declaration and for joint possession of the suit land.

The plaintiffs filed the aforesaid suit claiming that Budh Ram was the owner of the property and he was the father of the plaintiffs No.1 and 2, father-in-law of plaintiffs No.5 and 7 and defendant No.1 and grand father of plaintiffs No.3,4,6 & 8 and defendants No.2 and 3. The defendants had illegally and without any justification got the mutation of the property sanctioned, left behind by Budh Ram, in their name by excluding the name of other heirs.

The suit was contested by the defendants. It was claimed by them that Budh Ram had executed a Will dated November 20,1979 and it was on the basis of the aforesaid Will that mutation of inheritance was sanctioned in favour of the defendants. They claimed that on the basis of the said Will, the defendants were exclusive owners of the property left behind by Budh Ram.

During the course of evidence before the Trial Court, the defendants did not produce any Will which was claimed to have been executed by Budh Ram. In these circumstances, on the basis of the entitlement of the parties and natural succession, the suit of the plaintiffs was decreed and they were held to be owners in possession to the extent of 4/5th share in the suit property. Mutation in favour of the defendant No.1 was set aside.

The appeal was filed by the defendants. All the findings recorded by the trial Court were affirmed by the Appellate Court. The appeal of the defendants failed before the Appellate Court.

Alongwith the present appeal, the defendants have also filed an application for additional evidence. They have sought to produce a copy of the Will dated December 20,1979 by way of additional evidence.

After hearing the learned counsel for the appellants and taking into consideration the facts and circumstances of the case, I do not find any justification to allow the application for additional evidence sought to be produced by the appellants.

It is not in dispute that the alleged Will dated December 20,1979 is an unregistered Will and as such the mere production of a copy of the said Will at the stage of second appeal cannot be allowed. Even otherwise, there is absolutely no explanation by the defendant appellants as to why the said Will could not be produced before the trial Court. Thus, the application for additional evidence is dismissed.

After hearing the learned counsel for the appellants on merits of the controversy, I do not find that the findings of fact recorded by the two Courts below suffer from any infirmity or are contrary to the record.

No question of law, much less any substantial question of law, arises in the present appeal.

Dismissed.

February 12, 2007 (Viney Mittal)
KD Judge